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3 **UNITED STATES DISTRICT COURT**

4 **DISTRICT OF NEVADA**

5 ROBERT L. STOCKMEIER,

Case No.: 3:18-cv-00548-HDM-WGC

6 Petitioner

7 **ORDER**

v.

8 RENEE BAKER, et al.,

9 Respondents

10 Petitioner Robert L. Stockmeier has submitted a § 2254 petition for a writ of habeas  
11 corpus (ECF No. 1-1). The court has reviewed his petition, and it shall be dismissed as second  
12 and successive.

13 28 U.S.C. § 2244(3)(A) provides: “[b]efore a second or successive application permitted  
14 by this section is filed in the district court, the applicant shall move in the appropriate court of  
15 appeals for an order authorizing the district court to consider the application.” Where a petition  
16 has been dismissed with prejudice as untimely or because of procedural default, the dismissal  
17 constitutes a disposition on the merits and renders a subsequent petition second or successive for  
18 purposes of 28 U.S.C. § 2244. *McNabb v. Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009);  
19 *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir. 2005).

20 Petitioner indicates on the face of his petition that he seeks to challenge his 1990 state  
21 judgment of conviction in case no. 19470 (ECF No. 1-1, p. 2). He also states that he previously  
22 challenged the same state judgment of conviction in federal habeas matter 3:94-cv-00365-HDM-  
23 RAM. On June 10, 1996, this court dismissed that petition as procedurally defaulted (*see* 3:94-

1 cv-00365-HDM-RAM, ECF No. 48). This court later denied Stockmeier's 2008 motion for  
2 relief from judgment, and the Ninth Circuit Court of Appeals denied a certificate of appealability  
3 (ECF Nos. 48, 56).

4 This petition, therefore, is a second or successive habeas corpus petition. *Henderson*, 396  
5 F.3d at 1053. Petitioner was required to obtain authorization from the Ninth Circuit Court of  
6 Appeals before he could proceed. 28 U.S.C. § 2244(b)(3). Petitioner has not indicated that he  
7 has received such authorization from the court of appeals.

8 Thus, this petition shall be dismissed with prejudice. Reasonable jurists would not find  
9 this conclusion to be debatable or wrong, and the court will not issue a certificate of  
10 appealability.

11 **IT IS THEREFORE ORDERED** that the petition is **DISMISSED** as set forth in this  
12 order.

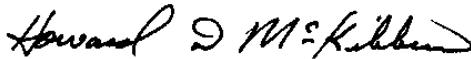
13 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

14 **IT IS FURTHER ORDERED** that the Clerk shall add Aaron D. Ford, Nevada Attorney  
15 General, as counsel for respondents.

16 **IT IS FURTHER ORDERED** that the Clerk shall electronically serve the petition,  
17 along with a copy of this order, on respondents. No response by respondents is necessary.

18 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly  
19 and close this case.

20 Dated: January 10, 2019



21  
22 HOWARD D. MCKIBBEN  
23 UNITED STATES DISTRICT JUDGE